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In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND IN  
HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

**PETITIONERS' BRIEF ON THE MERITS**

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**QUESTION PRESENTED**

May a state limit a new state resident's AFDC benefits to the level of benefits received or receivable in the person's state of prior residence for a period of a year, with full benefits to be provided thereafter?

## PARTIES

Petitioners, who were defendants below, are Eloise Anderson, Director of the California Department of Social Services, the California Department of Social Services, and Russell S. Gould, Director of the California Department of Finance. Mr. Gould was appointed as the Director of the Department of Finance on August 1, 1993, and as such, is the successor in interest to Thomas Hayes, who was named in the original pleadings filed in the District Court. Mr. Gould is automatically substituted as a party for Mr. Hayes pursuant to the provisions of Rule 25(d) of the Federal Rules of Civil Procedure.

Named respondents, plaintiffs below, are Deshawn Green, Debby Venturella, and Diana P. Bertolli. On January 29, 1993, the trial court ordered that plaintiffs shall provisionally maintain this matter as a class action on behalf of a class consisting of applicants and recipients of Aid to Families with Dependent Children ("AFDC") who have applied or will apply for benefits on or after December 1, 1992, and who have not resided in California for twelve consecutive months immediately preceding their application for aid.

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No. 94-197

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PETITIONERS' BRIEF ON THE MERITS

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**OPINIONS BELOW**

The decision of the Court of Appeals, *Green v. Anderson*, is reported at 26 F.3d 95 (9th Cir. 1994) and is reprinted in the Appendix to the Petition for Writ of Certiorari ("Pet. App."), A1-2. The decision of the district

court is reported at 811 F.Supp. 516 (E.D. Cal. 1993), and is reprinted at Pet. App. A3-20.

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### JURISDICTION

On April 29, 1994, the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") issued its opinion, affirming the preliminary injunction granted by the United States District Court for the Eastern District of California ("the District Court"). A timely petition for writ of certiorari was filed and docketed by this Court on July 28, 1994. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the Court of Appeals. 28 U.S.C. § 1254(1).

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### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Welfare and Institutions Code section 11450.03:

"(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

"(b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:

"(1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).

"(2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code).

"(Added by Stats. 1992, c. 722 (S.B.485), § 37.5, eff. Sept. 15, 1992.)"

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### STATEMENT OF THE CASE

On December 1, 1992, the State of California began a five-year experimental project modifying welfare benefits

provided under the Aid to Families with Dependent Children ("AFDC") program. This project, known as the Assistance Payments Demonstration Project ("Demonstration Project"), has two primary elements. The first element is a work incentive program, coupling a decrease in benefit levels with an increase in the amount of income a recipient can earn from work without a corresponding reduction in benefits. Cal. Welf. & Inst. Code § 11450.01.<sup>1</sup>

The second element of the Demonstration Project, central to this action, is a one-year limitation on the amount of AFDC benefits an applicant who has not resided in California during the prior year can receive. New state residents receive the level of benefits they received or would have received in the state they lived in prior to moving to California. Cal. Welf. & Inst. Code § 11450.03 ("the Statute").

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<sup>1</sup> Implementation of this element required a waiver from the U.S. Secretary of Health and Human Services ("the Secretary") of certain federal AFDC rules. This element of the Demonstration Project is the subject of related litigation. In an effort to halt implementation of the project, California AFDC recipients filed suit in the United States District Court for the Eastern District of California ("District Court") against representatives of the United States and the State of California. The District Court denied the recipients' motion requesting a preliminary injunction. *Beno v. Shalala*, 835 F.Supp. 1193 (E.D. Cal. 1993). The District Court's order was appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit vacated one of the waivers, reversed the District Court order, and remanded the matter to the District Court with instructions to remand the disputed waiver back to the Secretary for additional consideration of the waiver. *Beno v. Shalala*, 30 F.2d 1057 (9th Cir. 1994). Rhg. denied August 24, 1994.

The California Legislature enacted the Statute as a means to reduce welfare expenditures. Impetus for the Statute came from the existence of continuing, severe economic and fiscal problems in California (Declaration of Dennis Hordyk, "Hordyk Declaration," Pet.App. 21) and the California constitutional provision mandating a balanced budget.<sup>2</sup> Failure to implement the Statute was expected to result in additional unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93 and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, Pet.App. 22.)

The Legislature specified that the Statute would become effective upon necessary approval by the federal Secretary of Health and Human Services ("the Secretary"). Cal. Welf. & Inst. Code § 11450.03(b).<sup>3</sup> The Secretary gave approval on October 29, 1992, and the California Department of Social Services began applying the limitation shortly thereafter. (District Court Order, Pet.App. 4.)

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<sup>2</sup> "Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided." California Constitution, article IV, section 12(a).

<sup>3</sup> On July 13, 1994, the Ninth Circuit vacated the waivers necessary to implement the provisions of this section. *Beno v. Shalala*, 30 F.2d 1057 (No. 93-16411).

A complaint for declaratory and injunctive relief ("complaint") was filed on December 21, 1992. The complaint named the California Department of Social Services, and the directors of the California Departments of Social Services and Finance as defendants. Plaintiffs are a class of California residents who have applied or will apply for AFDC benefits on or after December 1, 1992 and who have not resided in California for twelve consecutive months immediately preceding their application for aid. Jurisdiction was conferred on the District Court by 28 U.S.C. § 1343(a)(3). This suit was brought pursuant to 28 U.S.C. § 1983. Plaintiffs' action alleged that the Statute violated various provisions of the United States Constitution, and infringed the constitutional right to travel.

The District Court issued a temporary restraining order on December 22, 1992, enjoining California from implementing the provisions of the Statute pending a hearing on plaintiffs' motion for a preliminary injunction.

At the hearing on plaintiffs' motion for a preliminary injunction, plaintiffs sought to block application of the AFDC grant limitation as provided for in the Statute. By declaration, plaintiffs averred that they suffered irreparable injury because, under the Statute, they would not receive the same AFDC grant that they would have received if they had already resided in California for the preceding twelve months. Plaintiffs averred they were fleeing abusive relationships rather than seeking higher welfare grants in migrating to California. (District Court Order, Pet.App. 5.)

California demonstrated the severe budget deficit facing the state – so severe that California would have no

reserve available to cover the costs of unforeseen events, such as natural disasters. (Hordyk Declaration, Pet.App. 21.) If California could not implement the Statute, it would have to spend 8.4 million dollars of state funds in fiscal year 1992-93, and 22.5 million dollars of state funds in fiscal year 1993-94. (Hordyk Declaration, Pet.App. 22.) Because of the severity of the state's budget deficit, there were no funds appropriated by the 1992-93 state budget to pay the additional costs that would result from an inability to implement the Statute. (Hordyk Declaration, Pet.App. 22.)

The hearing on plaintiffs' motion for a preliminary injunction was held on January 28, 1993. The District Court ruled from the bench, issuing the injunction. (District Court Order, Pet.App. 3.)

The District Court found that the Statute implicated the constitutional right to freedom of travel or migration, that a strict scrutiny analysis was therefore required to review the Statute, that California could not show a compelling reason for the Statute, and that plaintiffs had demonstrated they would suffer irreparable injury if the injunction were not granted. (District Court Order, Pet.App. 3.)

California filed an appeal from the District Court's order. On April 29, 1994, the Ninth Circuit summarily affirmed the District Court's order. (Ninth Circuit Order, Pet.App. 2.) On June 13, 1994, the Ninth Circuit corrected its previous order and ordered that its April 29, 1994, order be published. The correction was not substantive. (Ninth Circuit Order, Pet.App. 2.) This Court docketed

California's petition for writ of certiorari on July 28, 1994. The petition was granted on October 7, 1994.

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### SUMMARY OF THE ARGUMENT

California may limit AFDC benefits for recent state residents for one year to the level of benefits they received or would have received in the state from which they came. Because California's Statute does not determine eligibility for benefits, it does not penalize the right to travel. New California residents receive the constitutionally permissible amount of benefits they received or would have received in their state of prior residence. Respondents are thus in no worse position, as a result of the application of the Statute, than if they had not moved to California.

Furthermore, the Statute does not permanently classify new state residents as entitled to a lower amount of AFDC benefits. This case presents a different situation from previous cases in which this Court has struck down state laws that penalized the right to travel. The Statute's constitutionality should be analyzed by the traditional rational basis test.

Even if the Statute does penalize the right to travel, its impact on the exercise of that right is, at best, remote and incidental. Statutes that do not raise a significant barrier to interstate migration should be analyzed under the traditional rational basis test.

The Statute easily passes the rational basis test. The continuing and worsening budget problems in California provide a rational basis for a statute that lowers state

welfare expenditures. States must have the flexibility to properly allocate diminishing resources among all of their residents.

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### ARGUMENT

#### I

**THE STATUTE DOES NOT OPERATE AS A PENALTY ON MIGRATION AND THEREFORE MUST BE UPHOLD IF IT HAS A REASONABLE BASIS.**

Contrary to the reasoning of the District Court, as adopted by the Ninth Circuit, California's two-tier system of AFDC benefits does not penalize new California residents. The Statute should therefore be subjected to a rational basis analysis, not a strict scrutiny analysis.

The District Court relied upon *Shapiro v. Thompson*, 394 U.S. 618 (1969), and its progeny in determining that the Statute should be subjected to a strict scrutiny analysis. In *Shapiro*, this Court held that legislation which denied outright welfare assistance to new state residents of less than one year duration was constitutionally impermissible because, as such legislation "... touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Shapiro*, 394 U.S. at 638; emphasis original.

Although at first glance *Shapiro* would seem to bar any restriction on the right to travel, such a reading of the case is unjustified. In a footnote, this Court further indicated:

"We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right to interstate travel."

(394 U.S. at 638, n 21; emphasis original.)

Thus, in *Shapiro*, this Court determined only that the complete denial of welfare assistance for a full year penalized the plaintiffs' right of interstate movement.

This Court reinforced its proscription against state legislation which penalized the right of travel in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 258-259 (1974). There, the Court stated that *Shapiro* "... stand[s] for the proposition that a classification which 'operates to penalize those persons . . . who have exercised their constitutional right of interstate migration,' must be justified by a compelling state interest," 415 U.S. at 258, but repeated its prior statement in *Shapiro*, that "some 'waiting period[s] . . . may not be penalties,'" *Id.*, at 258-259.

In both *Shapiro* and *Memorial Hospital* the plaintiffs' right to travel was penalized because they were put in a worse position by application of the statutes at issue after they moved to their new states. In *Shapiro*, the plaintiffs had a right to receive welfare assistance in their state of prior residence. After moving, they were no longer eligible for welfare assistance for a full year. In *Memorial Hospital*, the plaintiffs had a right to state-funded non-emergency medical care before they moved. After they

moved to Arizona, they were not eligible for non-emergency medical care for a period of twelve months. Thus, in both cases, the plaintiffs irretrievably lost their eligibility to public assistance due solely to their moving to a new state. This Court determined that their right to travel had been penalized.

This Court may hold for petitioners in this case without disturbing the holdings of *Shapiro* and *Memorial Hospital*. Unlike the plaintiffs in *Shapiro* and *Memorial Hospital*, respondents here have not lost any eligibility to public assistance they enjoyed in their state of prior residence. In other words, California's Statute does not penalize the right to travel.<sup>4</sup>

Citing *Zobel v. Williams*, 457 U.S. 55 (1982), the District Court determined that the relevant comparison is not between newcomers to California and residents of

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<sup>4</sup> Respondents argue that without the guarantee of a certain benefit level, they cannot move to California. They are therefore requesting California to fund their move to California. No other newcomers to California have the ability to demand a certain payment level upon their decision to move to a new home - nor should they. As a general matter, a state is under no duty to subsidize the costs of the exercise of constitutional rights. In *Harris v. McRae*, 448 U.S. 297, 317-318 (1980), this Court held that a woman's freedom of choice does not carry with it a constitutional entitlement to the financial resources necessary to exercise that freedom. Here, California has not prohibited travel or placed a substantial obstacle in the way of a newcomer's move to California; it has simply limited welfare benefit levels for recent California residents to no more than they received or would have received in their state of prior residence. New residents are free to travel to California, and AFDC benefits remain available for recent California residents.

other states, but between newcomers and existing California residents. Pet.App. A14. However, existing residents are not even potentially impacted by California's Statute. If strict scrutiny is triggered by a penalty on the right to travel, then the existence of that penalty should be judged by its impact on persons who have traveled, or who may potentially travel, to California and not by a comparison involving existing California residents. Because only out-of-state residents may suffer detriment (be penalized) by operation of the Statute, the issue of penalty must be whether those out-of-state residents suffer a detriment due to a decision to travel to California. To determine whether this detriment exists, one must compare the position of newcomers before and after travel to California.

Here, respondents have no change in their position and have suffered no detriment, as to receipt of AFDC benefits upon moving to California. Respondents receive AFDC benefits in the same amount they received, or would have received, in their state of prior residence. As such, they have suffered no detriment, and have not been penalized by traveling to California.

In *Zobel v. Williams*, income from oil reserves was distributed by Alaska to its residents based upon length of state residency, thereby creating permanent classifications. Because no other state provided income from oil reserves to its residents, the District Court cited *Zobel* for the proposition that the proper comparison in analyzing whether a penalty on the right to travel exists is between newcomers to a state and existing residents. However, this Court in *Zobel* stated, 457 U.S. at 58, that the Alaska

statute is quite unlike the durational residency requirements examined in *Shapiro* and *Memorial Hospital*. Because this Court concluded in *Zobel* that the Alaska statute lacked a rational basis, this Court did not engage in an analysis of whether the Alaska statute triggered strict scrutiny due to its impact on travel. Therefore, this Court's decision in *Zobel* does not compel this Court to engage in the fiction of determining whether newcomers have been penalized by California's Statute by comparing newcomers with existing residents.<sup>5</sup>

Nor are respondents handicapped by the creation of permanent distinctions among residents and newcomers as were the plaintiffs in *Zobel*, *State Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985). The statute at issue in *State Attorney General of New York v. Soto-Lopez* determined eligibility for veteran's preference for civil

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<sup>5</sup> The District Court also implied that because California's cost of living is generally higher than elsewhere, the benefits provided for by California's Statute operate as a penalty on new residents. This argument assumes, however, that the benefits received in the prior state of residence bear some rational relationship to the standard of need in that state. This assumption is in error as there is no requirement for benefit levels to be related to the standard of need. In fact, many states have constitutionally approved benefit levels much lower than the standard of need in that state. *King v. Smith*, 392 U.S. 309, 334 (1968); *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). The states have "undisputed power" under the Social Security Act "to set [both] the level of benefits and the standard of need" in the AFDC program. *King*, 392 U.S. at 334; *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972).

service employment based upon state residency at the time of induction into the armed forces. Similarly, the statute at issue in *Hooper v. Bernalillo County Assessor* determined eligibility for a property tax exemption based upon residency before a specific date. Persons subject to the Statute at issue here do not have their eligibility for AFDC benefits determined upon California residency.

Since the Statute does not determine eligibility based upon state residency, all persons subject to the provisions of the Statute are entitled to some level of benefits. Unlike plaintiffs in *Shapiro*, *Memorial Hospital*, *Hooper*, and *Soto-Lopez*, respondents here are not foreclosed from all AFDC benefits under the Statute.

Thus, because the Statute does not operate as a penalty on the right to travel of newcomers to California, petitioners need only demonstrate a rational basis for the Statute to survive a constitutional challenge.

## II

### **EVEN IF THE STATUTE OPERATES AS A PENALTY ON MIGRATION, THE IMPACT OF THAT PENALTY IS REMOTE AND INCIDENTAL, AND, THEREFORE, THE STATUTE SHOULD NOT BE SUBJECT TO STRICT SCRUTINY**

The dissent by Chief Justice Rehnquist in *Memorial Hospital*, 415 U.S. at 282-284, notes that in *Williams v. Fears*, 179 U.S. 270 (1900), the Court upheld a Georgia statute taxing persons hiring labor for work outside the State of Georgia because it affected freedom of egress "only incidentally and remotely." Because there was a reasonable basis for the Georgia tax statute, it did not

violate the Fourteenth Amendment to the United States Constitution. *Williams, supra*, 179 U.S. at 275.

Chief Justice Rehnquist's dissent in *Memorial Hospital* also notes that until this Court's decision in *Shapiro*, the leading case involving the right to travel, *Edwards v. California*, 314 U.S. 160 (1941), invalidated a statute that clearly was specifically designed to deter indigent persons from entering California by subjecting to criminal penalties "any person 'that brings or assists in bringing into the State any indigent person . . .'" *Memorial Hospital*, 415 U.S. at 249. The *Edwards* statute was not an incidental or remote barrier to migration as it provided for criminal penalties. It was instead an effective and purposeful attempt to insulate the state from indigents and a significant barrier to interstate travel. Thus, cases prior to *Shapiro* demonstrate that statutes whose impact on travel is incidental and remote should be judged by traditional, reasonable basis, equal protection tests. To be judged by stricter, heightened scrutiny, statutes should do more than just "touch on" the right to travel. Strict scrutiny should be reserved for statutes which impose a significant and severe penalty on travel. Were this not the case, the result in *Sosna v. Iowa*, 419 U.S. 393 (1975) would be inexplicable since this Court in *Sosna* permitted the State of Iowa to temporarily deprive newcomers of the right to file for divorce, notwithstanding the "touch" that state law had on interstate migration. This Court in *Sosna* made clear, therefore, that merely touching on the right to travel is insufficient to trigger strict scrutiny.

Therefore, the constitutionality of California's Statute should be judged by traditional, reasonable basis, equal protection tests. Indeed, a reasonable basis analysis is the

appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

In this case, the Statute's impact on travel is incidental and remote to its purpose of reducing state expenditures. As to the level of AFDC benefits, persons impacted by the Statute are placed in a position identical to that which they occupied before departing their state of former residence.<sup>6</sup> The Statute does not provide a penalty on the basic necessities of life, and it does not render new residents of California ineligible for public assistance, nor does it prevent anyone from traveling to California. Persons subject to the Statute receive the same amount of AFDC benefits which were constitutionally permissible in their state of prior residence. *Dandridge*, 397 U.S. at 480 and 483.

To the extent that the Statute has the effect of paying new residents less welfare than persons who have resided in California for more than twelve months, the Statute's impact is mitigated by the fact that, for every three dollars an AFDC grant is reduced by operation of the Statute, Food Stamps are increased by approximately one dollar. (See Declaration of Michael C. Genest ("Genest Declaration" Pet.App. 26-27).) In addition, all California

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<sup>6</sup> "In both 1980 and 1985 all but five of the states had a cost of living within ten percent of the national average . . . when all states are considered together, the variation in AFDC benefits is four times larger than the variation in the cost of living." Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990) p. 11. Thus, there is not a significant relationship between a state's cost of living and its welfare payments.

AFDC recipients (including new residents) may be entitled to a Special Needs Allowance, including an allowance for homeless assistance (Genest Declaration, Pet.App. 26) and persons subject to the Statute remain eligible for full Medicaid benefits. Although respondents have previously focused on the high cost of living in California, such considerations are irrelevant as there is no constitutionally required relationship between the standard of need and the level of AFDC payments.<sup>7</sup> Furthermore, the Statute is not a permanent part of California's AFDC program. It is one federally approved component of California's Assistance Payments Demonstration Project. The five-year demonstration project was approved only through September 30, 1997. (Record, District Court Clerk's Docket entry 69, Exhibit 2, page 1. Joint Appendix 56.) Thus, the impact of the Statute on the right to travel is significantly less than the impact of the statute at issue in *Shapiro*, which operated as a total denial of welfare assistance for a year. The impact of the Statute is also much less than the impact on the right to

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<sup>7</sup> Within the broad parameters of federal AFDC requirements, states have a great deal of discretion in determining the standard of need and the level of benefits. 42 U.S.C. §§ 601, et seq. *King v. Smith*, *supra*, 392 U.S. at 318. It is constitutionally permissible both to establish a benefit level below the standard of need and to set benefits which will encourage gainful employment. It is also constitutionally permissible to disregard family size in setting benefit levels. *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). 42 U.S.C. § 601 states that the purpose of the AFDC program is, in part, to " . . . furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State. . . ." Thus, to the extent that the Statute operates as a reduction of benefits, the Statute is constitutionally permissible.

travel of the statutes at issue in *Zobel v. Williams*, *State Attorney General of New York v. Soto-Lopez*, and *Hooper v. Bernalillo County Assessor*. In all of those cases, the statutes at issue created permanent classifications among residents and newcomers. A strict scrutiny analysis is inappropriate in this case; a reasonable basis analysis suffices. A reasonable basis analysis is the appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

### III

#### CALIFORNIA'S INTEREST IN REDUCING WELFARE COSTS IS SUFFICIENT TO JUSTIFY THE USE OF A TWO-TIER SYSTEM OF DISTRIBUTING AFDC BENEFITS.

Contrary to statements made by the District Court, and adopted by the Ninth Circuit, California's interest in reducing welfare costs is sufficient to justify statute's two-tier system of distributing AFDC benefits.

The District Court's finding is derived from the determination that the Statute must be subjected to strict scrutiny. However, as shown above, a strict scrutiny analysis is not proper because the Statute does not penalize the right to travel as it does not affect eligibility for AFDC. Here, the correct analysis is the reasonable basis or rationality test. The Statute passes that test. The continuing and worsening budget problems in California provide a rational basis for a statute that lowers state welfare expenditures. Furthermore, as part of a federally approved experiment in welfare reform, pursuant to 42

United States Code section 1315(a), it provides necessary information for future decision-making by state and federal policymakers.

When a state distributes benefits unequally, the distinctions it makes are subject to review under the Equal Protection Clause of the Fourteenth Amendment. The statutory scheme must pass the rationality test at a minimum. *Zobel v. Williams*, 457 U.S. 55, 60 (1982). Generally, a law will survive such scrutiny if the distinction rationally furthers a legitimate state purpose.

Durational residency requirements have been found constitutionally permissible if the justifications are sufficient. *Sosna v. Iowa*, 419 U.S. 393. In *Sosna*, the state's longstanding and virtually exclusive interest in regulating domestic relations justified the impact on travel of a statute that required that a petitioner in a divorce action be a resident of Iowa for one year preceding the filing of the petition. 419 U.S. at 406. California's interest in maintaining a balanced budget is at least as important as a state's interest in regulating domestic relations.

The plaintiff in *Sosna* was not irretrievably foreclosed from obtaining some part of what she sought. In the present case, respondents' eligibility for public assistance is not in question. A potential AFDC recipient coming to California still may apply for, and, if eligible, obtain assistance, but at a rate equal to what that potential recipient would have received in the state of prior residence. Here, as in *Sosna*, the justifications for the durational residency requirement are rational, and hence, legitimate. A grant level which is constitutionally permissible in one state should not become unconstitutional in

another state just because the grantee made a unilateral decision to change residence.

Here, the budget problems confronting California outweigh respondents' claims. The Statute is a legislative solution designed to confront problems not apparent in *Shapiro* and its progeny. The Statute uses a temporary classification which does not permanently deprive plaintiffs of any interest. Because the Statute imposes no penalty on the right to travel, the Statute is constitutionally permissible since it rests upon a rational basis.<sup>8</sup>

The Statute easily passes the rational basis test. The unstated but plain purpose of the Statute is to reduce California's welfare expenditures. California was forced to reduce expenditures in the AFDC program in fiscal years 1990-91, 1991-92, and 1992-93 because of severe gaps between projected revenues and expenditures. Welfare and Institutions Code sections 11450.01, 11450.02, and 11450.03 (the Statute) were all designed as components of a federally approved demonstration project to temporarily reduce aid grants in the AFDC program and to provide information with which to evaluate further work incentives. Legislative Counsel's Digest of Senate Bill 485, added by stats. 1992, c. 722, No. 10 West's Cal. Legis. Service, p. 2898;<sup>9</sup> Pet.App. 29. Reducing state

<sup>8</sup> To the extent that *Shapiro* and its progeny appear to hold that financial considerations can never justify durational residency requirements, those holdings should be re-examined.

<sup>9</sup> The need to reduce state expenditures required in fiscal year 1992-93 is evidenced by the fact that the Governor reduced the appropriation for the support of his office by 15 percent. His veto message stated, "I take this action because of the unprecedented fiscal constraints and limited resources in the General

expenditures, especially in the midst of a continuing and growing budget deficit, is certainly a legitimate state purpose, just as is studying the effect of welfare reform initiatives.

The Statute achieves its purpose of reducing state expenditures by temporarily limiting the level of AFDC grants to those who choose to move to California. As noted above, the Statute does not prevent people from moving to California; it removes California's relatively high AFDC benefit levels, for a period of one year, as one of the factors a person might consider when contemplating a move to California.

Scholars have observed that welfare-induced interstate migration has had significant effects on state AFDC policies. Peterson et al., *Welfare Magnets* (The Brookings Institution, 1990) p. 83. Two important studies have shown that the effect of welfare benefits on migration is strong and significant. *Id.*, at 58. Furthermore,

" . . . as people make major decisions about whether they should move or remain where they are, they take into account the level of welfare a state provides and the extent to which that level is increasing. The poor do this roughly to the same extent that they respond to differences in wage opportunities in other states." *Id.*, at 83.

"A state with high welfare benefits provides incentives both for the poor to remain in the

Fund." Budget Act of 1992, stats. 1992, c. 587, No. 9 West's Cal. Legis. Service, p. 1832, Pet.App. A31.

state and for the poor in other states to move there." *Id.*, at 20.

Whether or not the Statute constitutes wise policy is a decision which rests exclusively with the California Legislature.<sup>10</sup> The degree to which the Statute relieves the state's fiscal crisis is also of no constitutional significance. As noted above, the setting of AFDC benefit levels is a political decision by the Legislature. "... [T]he Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. at 487.

Recognizing the political process involved in the state's determination of the level of benefits, the Third Circuit, in *Everett v. Schramm*, 772 F.2d 1114 (3d Cir. 1985), discussed the policy of political accountability in the failure of Delaware's standard of need to reflect inflation.

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<sup>10</sup> Because of the experimental nature of the Statute, the results of this experiment may provide state and federal policy-makers with valuable information to assist them in future decision-making. The Statute is a component of a federally-approved demonstration project pursuant to 42 U.S.C. 1315(a). A condition to federal approval was the performance of a careful, scientific evaluation of the impact the Statute may have on migration. To measure this possible impact, the evaluation of the Statute will include an analysis of: the number of AFDC families migrating to California before and after the Statute is implemented; whether those families came from states with lower or higher AFDC benefit levels; the percentage of total caseload that migrated to California; and the average number of months newcomers resided in California before they applied for aid. (Record, District Court Clerk's Docket entry 69: Exhibit 8, p. 14.)

"Under the statutory scheme, AFDC recipients and activists must avail themselves of the political process, not the judicial process . . . to effect the changes they seek." *Id.* at 1122.

As noted by this Court, "... intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court . . . ." *Dandridge*, 397 U.S. at 487. Like Delaware's decision to reduce benefit levels, California's reduction of AFDC benefits is a political decision subject to public scrutiny. Here the legitimate state purpose is to reduce expenditures so that scarce resources may be preserved for all, including recipients of public assistance.

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## CONCLUSION

This Court may uphold the constitutionality of the Statute without overruling *Shapiro* and *Memorial Hospital*. Respondents are not penalized by the Statute. If the Statute affects the decision to migrate, it does so in an incidental and remote way which does not rise to the level of impact that triggers strict scrutiny.

This Court should hold that where a classification imposes no penalty on travel, or at most, has an incidental and remote effect on the right to travel, that classification can stand if rationally based, and that conservation of the taxpayer's purse is a sufficiently rational basis to justify a limit on public assistance expenditures. States must have the flexibility to allocate diminishing financial resources among all of its residents, including recent ones.

This Court should reverse the judgment of the Ninth Circuit and remand this case with instructions that the preliminary injunction be dissolved and the complaint dismissed.

Dated: November 14, 1994

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